

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**KEITH RUSHING as beneficiary of
KRISTIN E. RUSHING, deceased,**

Plaintiff,

v.

**SECURIAN LIFE INSURANCE COMPANY,
UNILEVER MANUFACTURING (US), INC.,
And MERCER HEALTH AND BENEFITS, LLC.
Defendants.**

**Case No. 2:19-CV-02816-SHM-tmp
JURY DEMANDED**

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW the Plaintiff, Keith Rushing, individually, and as beneficiary of Kristin E. Rushing, deceased, by and through counsel of record, and for the Plaintiff's cause of action against the Defendants would show:

I.

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff, Keith Rushing, is the surviving ex-spouse of the Decedent, Kristin E. Rushing, deceased. The two shared a minor child in common, Keiana Rushing. At all times herein, Keith Rushing and Kristin E. Rushing were citizens and residents of Tipton County, Tennessee.

2. Defendant, Securian Life Insurance Company, (hereinafter Securian Life), is a for-profit company organized and existing under the laws of a State other than Tennessee, doing business in Tennessee, with its principal place of business at 400 Robert St. N. in St. Paul, Minnesota 55101-2037. Registered agent for service of process is the Corporation Service Company, 2908 Poston Avenue in Nashville, Tennessee, 37203-1312.

3. Defendant Unilever Manufacturing (US) Inc., (hereinafter Unilever), is a for-profit company organized and existing under the laws of a State other than Tennessee, doing business in Tennessee, with its principal place of business at 2900 W. Truman Blvd in Jefferson City, Missouri, 65109-0546 and mailing address at 700 Sylvan Avenue, in Englewood Cliffs, New Jersey, 07632. Registered agent for service of process is the CT Corporation System located at 300 Montvue Road in Knoxville, Tennessee 37919.

4. Defendant, Mercer Health and Benefits, LLC (hereinafter Mercer), is a for profit administration company organized in Delaware, with its principal place of business at 1166 Avenue of the Americas, New York, New York, 10036-2708 and a mailing address of Tax Department, 121 River Street, Suite 3, Hoboken, New Jersey, 07030-5892. Their registered agent for service of process is Mercer (US), Inc., with an address of 800 S. Gay Street, Suite 2021, Knoxville, Tennessee, 37929-9710.

5. Plaintiff's decedent, Kristin E. Rushing, at all times pertinent herein, was insured under Defendant's Insurance Policy. Defendant Securian's claim number in this matter is 1378330. Defendants have refused to provide Plaintiff with a copy of the full policy in question, and one will be attached to an Amended Complaint as soon as provided.

6. This case was originally brought in the Tipton County Chancery Court pursuant to Tenn. Code Ann. §§ 16-11-102, 20-2-201, and 20-4-104(1), as the death giving rise to the Plaintiff's claim under the policy occurred in Tipton County. It was removed to federal court on the basis of federal question jurisdiction (28 U.S.C. § 1331) under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. (ERISA) and diversity jurisdiction pursuant to 28 U.S.C. § 1332 by Defendants. Plaintiff can not yet attest to the status of the policy

as an ERISA policy at this time.

II.

FACTS

7. All allegations contained in Paragraphs 1 through 7 hereinabove are reiterated and incorporated herein by reference as if fully set forth.

8. In early 2018, Plaintiff Keith Rushing and Kristin Rushing, were divorced. Keith Rushing informed his place of work, Unilever, through whom both his and Kristin's life insurance policies were written, of the divorce. Unilever's Human Resources representative, Christine Horner, instructed Plaintiff to contact Securian about his next steps.

9. Within days, Plaintiff called the Securian representative he was told to call by Ms. Horner. When he informed the Securian of his recent change in familial situation, he was advised by Securian's representative that he could change the beneficiary of his life insurance over the phone, which he did that day to his sister. However, the representative informed Plaintiff that he did not have to cancel the policy for his ex spouse, Kristin Rushing.

10. Because Plaintiff still shared a minor child with Kristin E. Rushing, he chose to continue paying premiums for her life insurance policy through his work, Unilever (Covington Hourly Group). Upon information and belief, the policy in question was written and maintained by the Securian Defendant, funded by Unilever, and administered by the Mercer Defendant.

11. The premiums were deducted from Plaintiff's paycheck bi-weekly for the life insurance policy for Plaintiff's decedent.

12. On or about January 27, 2019, Plaintiff's decedent, Kristin E. Rushing suffered a heart attack and died later that same day at the age of 39.

13. When Plaintiff informed Securian of the loss of his ex wife and child's mother, he was sent a letter denying his claim on February 22, 2019, despite his consistent and timely payment of all premiums on decedent's spouse life benefits and being told by a Securian representative the policy was still valid. The claim number in this matter was listed at 1378330. Attached hereto as Exhibit A.

14. On behalf of Plaintiff, a written notice demanding payment pursuant to Tenn. Code Ann. 56-7-105 was sent on or about September 4, 2019. It was received on September 9, 2019 and signed for by T. Sheehey.

15. The claim was again denied on September 17, 2019. Exhibit B hereto.

III.

CAUSE OF ACTION

16. Plaintiff brings this cause of action against the Defendant and sues for declaratory judgment of his rights to benefits under the Policy pursuant to Tenn. Code Ann. §§ 29-14-101 *et seq.*

17. This Court has the power to "determine any question of construction or utility arising under" a written contract pursuant to Tenn. Code Ann. §§ 29-14-102 and 103.

18. When an insurance policy's contract is ambiguous, the language must be construed against the insurance company, in favor of the insured.

19. Plaintiff sues for a determination of the construction of the policy as a person "whose rights, status, or other legal relations are affected." Tenn. Code Ann. § 29-14-103.

20. Upon information and belief, the policy held by and paid for by Mr. Rushing for

benefit of life insurance on Kristin Rushing was issued and the claim adjudicated by Securian Life Insurance Company, funded by Unilever, and administered by Mercer.

IV.

REQUEST FOR RELIEF

21. WHEREFORE, because Plaintiff Keith Rushing, policy holder, paid premiums and was entitled to death benefits upon information and belief, according to both the language of the policy, as well as, the Defendants' representations that the policy was valid, Plaintiff is entitled to a declaratory judgment against the Defendants and respectfully requests the Court to declare:

- A. The language of the policy requires a payment of the death benefit of fifty thousand dollars (\$50,000);
- B. A penalty of 25% of the value of the policy, plus attorneys' fees;
- C. For such other and further relief as to which he may be entitled, the Plaintiff respectfully requests the Court to enter judgment in his favor;
- D. The Plaintiff reserves the right to amend the Complaint and request for relief as further and other facts become known.

RESPECTFULLY SUBMITTED this 11th day of February, 2020.

HARRIS SHELTON HANOVER WALSH, PLLC

BY: /s/ Amber Griffin Shaw

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Certificate of Service

Counsel for the Plaintiff certifies that a copy of the foregoing has been sent via the ECF system on February 11th, 2020 to the following:

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